IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.347 of 2007
Date of decision: February 23, 2007.

Alka

...**Petitioner(s)**

v.

Subhash Chugh

...**Respondent(s)**

CORAM:
HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri Arun Singal, Advocate for the petitioner.

ORDER

This revision petition is directed against the order dated 6.2.2007 passed by the learned Judicial Magistrate First Class, Panipat whereby the petitioner's contention that in terms of order dated 16th May, 2000 passed by the then Chief Judicial Magistrate, Panipat, the defence of the respondent be struck off, has been turned down.

The petitioner is wife of the respondent. She has filed a petition under section 125 Cr.P.C. for grant of maintenance and as is apparent from the impugned order, the respondent-husband was directed by the Chief Judicial Magistrate, Panipat vide his order dated 16th May, 2000 to make payment of arrears of interim maintenance which were to the tune of Rs.10,000/- by 12th June, 2000 and on his failure, his defence was ordered to be struck off.

The impugned order further reveals that subsequent to the above stated order, the respondent-husband has been making certain payments from time to time and the petitioner has been receiving the same without insisting upon implementation of the order dated 16th May, 2000, referred to above. The last payment, as it appears, was received by the

petitioner on 28th January, 2006.

Having taken notice of the fact that the petitioner-wife never insisted upon to strike off the respondent's defence even when he failed to make payment of the entire arrears of interim maintenance by 12th June, 2000, the learned Judicial Magistrate vide his impugned order has declined the petitioner's prayer and has permitted the respondent to lead his defence evidence.

It is contended on behalf of the petitioner that there was not requirement for the petitioner to insist upon the implementation of the order dated 16th May, 2000 as the consequences thereof were to flow automatically.

After hearing Learned Counsel for the petitioner, I do not find any merit in the above noticed contention. The petitioner was obligated to plead and prove before the learned trial court that notwithstanding the order dated 16th May, 2000, the respondent had failed to pay arrears of the interim maintenance and, thus, the said order had become operative. No such attempt was made by her, rather, she has been accepting not only the arrears of maintenance but the interim monthly maintenance also.

Consequently, no interference in the impugned order is warranted.

Faced with this situation, Learned Counsel for the petitioner contends that the respondent has yet not paid all the arrears of interim maintenance and an amount to the tune of more than Rs.33,000/- is yet recoverable from him.

In order to appreciate and redress the aforesaid grievance, I do not deem it appropriate to issue notice of motion to the respondent.

If the contention with regard to non-payment of arrears of maintenance by the respondent, as noticed above, is factually correct, the petitioner is permitted to move an application along with her affidavit before the learned Judicial Magistrate and it is directed that the learned Judicial Magistrate shall give one or two reasonable opportunities to the respondent to make payment of the entire arrears and thereafter only the defence evidence shall be allowed to be led. In case the respondent fails to make payment thereof, the learned Judicial Magistrate shall be at liberty to strike off his defence.

The aforesaid observations/directions, however, shall not be

construed as if the respondent is undisputedly in arrears of the interim maintenance. It shall be open to him to contest the petitioner's claim and to show that nothing is recoverable from him.

Disposed of.

Copy dasti on payment of usual charges.

February 23, 2007. [**Surya Kant**]
kadyan **Judge**